

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 651 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

VS

KALABHAI SONABHAI PARMAR AND OTHERS

Appearance:

Mr. Y.F. Mehta, learned A.P.P. for the petitioner

CORAM: N.J. PANDYA AND H.L. GOKHALE, JJ

DATE: 17.2.1997

ORAL JUDGEMENT (per N.J. Pandya, J)

Six accused were facing charge of murder and

other lesser offences under I.P.C. read with Section 34 of the I.P.C. They were tried by the learned Additional Sessions Judge of Sabarkantha at Himatnagar camp at Modasa in Sessions Case No. 97 of 1994. The learned judge by his judgement dated 31.5.1996 was pleased to convict original accused No. 1 before him for offence under Section 302 I.P.C. and the rest were convicted for lesser offence under Section 323 individually. In other words, the learned trial judge did not accept the case of the prosecution based on the alleged common intention and its sharing.

2. We are inclined to agree with this approach of the learned judge after going through the record. The reason is that the quarrel started, to us, would appear to be a very trivial matter but for the parties it might be a serious thing. The accused, according to the prosecution, were chasing a rabbit for the obvious reason of eating it. It was caught by a dog said to be that of the accused party. The deceased Savabhai intercepted these two animals and succeeded in saving the rabbit from the jaws of the dog and did not give it to the accused. This led to a quarrel which initially was resulted in use of hands and fists. Later on according to the prosecution stick was used and so was dharia.

3. Accepting the case of the prosecution that it was original accused No. 1 used dharia, learned judge convicted him for offence under Section 302 of I.P.C. and for the rest of the accused as stated above lesser offence was said to have been committed by them according to the learned judge.

4. With regard to common intention and its sharing except that they were all present and they were beating the deceased by hand and fists, there is no indication. Therefore, it is not possible to believe that what had started as a mere fight and which evidently deteriorated into a death was a plant affair between all the accused and right from the beginning they were sharing the intention of eventually killing the man. The view taken by the learned judge, in our opinion, is quite reasonable and supported by evidence on record. The appeal is therefore rejected.

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